MT LEGISLATIVE HISTORY

Chapter 598 1979

Bill (H) 803 S _____ Original bill & hist. ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 20	✓C	Hearing Date(s) Mar 14	✓C
_____	___C	Mar 20	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C	Mar 21	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 1517/01

House BILL NO. 803

INTRODUCED BY Hansen/Gosek/Rehbein/Boharski
Hayne/Roth/Jensen/NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE CONFIDENTIAL HEALTH CARE INFORMATION; PROVIDING FOR DISCLOSURE OF THE INFORMATION IN CERTAIN CASES; AND PROVIDING PENALTIES FOR VIOLATION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of [this act] is to establish safeguards for maintaining the integrity of confidential health care information.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means diagnosis, treatment, medical evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

Section 3. Confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

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(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) by a health care provider:

(i) as may be reasonably necessary to provide health care services; or

(ii) in the administration of the office, practice, or operation;

(e) by an employer as may be reasonably necessary in the administration of a group insurance plan or workers' compensation plan;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit.

Section 4. Conditions of transfer -- right to request

modification. (1) A third party who has performed an adverse action defined in subsection (2) may transfer confidential health care information to a designated physician when the third party receives a written request signed by the affected person or his authorized representative.

(2) The adverse action referred to in subsection (1) may include but is not limited to:

(a) denial of an application for an insurance policy;

(b) issuance of an insurance policy with other than standard and uniform restrictions;

(c) rejection in whole or in part of any claim for insurance benefits;

(d) denial of an employment application or termination of employment when such denial or termination is for health reasons.

(3) Prior to making a transfer, a third party may require payment of actual expenses incurred in the retrieval, duplication, and forwarding of such information.

(4) A physician receiving confidential health care information pursuant to subsection (1) may review and interpret the information. Thereafter, the physician may, in his discretion, disclose to the affected person as much of the transferred information as he believes is in the best interest of the affected person to know.

(5) After reviewing confidential health care

information received pursuant to subsection (4), an affected person or his authorized representative may request a third party to amend or expunge any part of the information that he believes is in error or request the addition of relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded the information to the third party. If the health care provider concurs with the modification requested by the affected person, the third party shall modify the information in accordance with the request.

(6) Modification of confidential health care information may be required by court order upon action brought by the requestor.

(7) After reviewing confidential health care information received pursuant to subsection (4), a person has the right to place into the confidential file a personal statement of reasonable length regarding the correctness or relevance of existing information or regarding the addition of new information. The statement or a copy thereof shall at all times accompany that part of the information to which it relates.

Section 5. Privileged information -- exemption from compulsory legal process. (1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of

proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

(2) The exemption or privilege provided in subsection (1) does not apply:

(a) when compulsory process is otherwise authorized by law;

(b) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(c) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

(d) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

(e) to an action pursuant to [section 7].

Section 6. No limitation on licensing board. [This act] does not limit the authority, otherwise provided by law, of a licensing or disciplinary board of this state to require a peer review committee to report to it concerning

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any disciplinary actions or recommendations of the committee or to transfer to it records of the committee's proceedings or actions, including confidential information. [This act] does not limit the authority of such board to restrict or revoke a license to practice. However, personally identifiable portions of a person's confidential health care information may not be used in any legal action without the written consent of the person or his authorized representative, except upon court order.

Section 7. Remedies — civil and criminal — exceptions. (1) A person who knowingly violates [this act] is guilty of a misdemeanor.

(2) A person who violates [this act] may be held liable for compensatory damages caused by the violation. Punitive damages may also be awarded.

(3) A person who obtains confidential health care information by criminal means is subject to the liabilities and penalties provided in subsections (1) and (2) in addition to any other penalty imposed by law for such criminal actions.

(4) The release or transfer of confidential medical information pursuant to [subsection (2) of section 3] may not be the basis for a civil or criminal liability and is not a violation of [this act].

(5) No disciplinary or punitive action may be taken

against an employee or agent who brings evidence of violation of [this act] to the attention of a person or entity.

Section 8. Attorney's fees and costs. Attorney's fees and reasonable costs may be awarded at the discretion of a court to a successful party in any action brought under the provisions of [this act].

Section 9. No waiver of act. An agreement purporting to waive the provisions of [this act] is invalid.

Section 10. Exemptions. (1) [This act] does not apply to the press.

(2) [This act] may not be construed to limit the reporting obligations provided by Title 37, chapter 3, part 4, or any other statute which requires information to be reported to a government agency.

-End-

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 805	repeal secions -unconstitutional in Woodal v UP Railroad	2/14	Williams		moved to labor 2/19	
HB 797	clarify who permitted access to youth court records	2/14	Uhde	2/20	pass	2/20
HB 798	county jails be inspected for determining whether appropriate for juveniles	2/14	Metcalf	2/20	do not pass	2/20
HB 799	create office of district att to replace county att in certain counties	2/14	Porter	2/20	do not pass	2/20
HB 803	define confidential health care information, etc.	2/14	Anderson	2/20	pass	2/20
HB 812	revising legislative finance act, etc.	2/14	Cooney	2/20	do not pass	2/20

MR. DESCHAMPS: It would be about $550,000.

Representative Keedy asked about page 4, section 7, When they provide services to the adjoining county after that provision took effect, would the adjoining counties pay for it.

MR. DESCHAMPS: Yes, and he explaine how it would work.

MR. KEEDY: Is it true that the adjoinging county would be provided for only if they did not have their own county attorney.

MR. DESCHAMPS: Yes, and he explained.

Representative Keedy asked about page 6, line 5, asked for an explanation.

Mr. Scully commented that there was duplication of the language on page 6. There was discussion about this, and no further questions and the hearing closed on House Bill 799.

HOUSE BILL NO. 801: Representative Meyer. They lost my information on this bill in the Legislative Counsel. It should be tied in with 616 but part of it got lost s: I had to come up with another bill. It changes the 40,000 to 100,000, basically that is all it does.

Representative Scully asked why not just amend the bill instead of introduce another one. There was discussion about this.

Representative Rosenthal asked what was the purpose of increasing the figures and Mr. Meyer said, this would provide them with enough money to lease the equipment.

The hearing closed on House Bill 801.

HOUSE BILL NO. 803: Representative Anderson. This bill is an attempt to define confidential health care information and provides for that disclosure only in certain cases. I will go through the bill. There are safeguards for maintaining the integrity and confidential nature of the information. He explained the definition. On lines 22 and 25 without written consent with some exceptions under subsection A. He commented on lines 4 and 5 of section 4, page 4. On page 5 it talks about privileged information. There are certain exceptions to this rule as well. Section 7, page 7, talks about the remedies, would be guilty of a misdemeanor.

JERRY LINDORF: The major reason for this bill is to check those types of situations. Page 3 is probably the real guts of it, the exceptions. There is also an exception in regards to courts. It exempts all of the reporting laws, such as gunshot wounds, venereal disease, and such as that. The main fpurpose of the act is to keep information confidential. We would consent to the proposed amendments.

CHAD SMITH: Montana Hospital Association. We support this with certain amendments. The first 6 pages does not say anything that we are not doing now, except for program audits and that sort of thing. The last pages get into another matter altogether which we think is not necessary. We are asking that the page 7, line 10 be deleted with the exception of subsection 2 of 10, lines 13, 14 and 15. There is not reason for a criminal penalty in this. We are asking for rules that we can follow. He discussed page 1, line 22. The title must be amended also.

Representative Holmes asked about page 3, line 20. Could an employer get personal information about a personal health record to deny a person insurance.

MR. LENDORF: An employer has no problem getting those records now. There was discussion about this.

Representative Eudaily asked what is meant by other medical persons. Discussion and the hearing closed on House Bill 803.

HOUSE BILL NO. 870: Representative Keedy. This bill would provide that the existence of a mental state necessary for commission of a criminal offense may be inferred from the acts of the accused. The facts and circumstances connected with the offense would provide that defenses relating to a lack of the required mental state must be proved by the defendant by a preponderance of the evidence. He went on to explain the bill in more detail, but said it is self-explanatory.

TOM HONZEL: This was the rule before adoption of the criminal code but was left out. They did not intend to leave it out. Professor Crowley from the law school, felt this would be better to get this into the criminal code.

There was some general discussion and the hearing closed on House Bill 870.

HOUSE OF REPRESENTATIVES
EXECUTIVE SESSION
JUDICIARY COMMITTEE
February 20, 1979

Following the regular meeting of the Judiciary Committee the members took a short break and then went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 10:45 a.m. in room 436 of the Capitol Building on Tuesday, February 20. All members were present except Representative Day, excused to chair the Agriculture Committee.

HOUSE BILL NO. 797: Representative Rosenthal moved "do pass". The motion carried with the vote unanimous.

HOUSE BILL NO. 798: Representative Keyser moved "do not pass". There was lengthy discussion about the rules. It was decided that they could already inspect the jails and the law was not needed. The motion carried with Representati Rosenthal, Kemmis and Uhde voting "no".

HOUSE BILL NO. 799: Representative Rosenthal moved "do pass". The motion failed. Representative Keedy asked for a roll call vote on "do not pass". The motion carried with the vote 10 yes, 6 no and 3 absent.

HOUSE BILL NO. 803: Representative Anderson moved "do pass". There was discussion about the need for an amendment. Representative Anderson will offer it on the floor. The question was called and the motion passed with Representative Eudaily voting "no".

HOUSE BILL NO. 812: Representative Rosenthal moved "do pass". Representative Seifert moved a substitute motion, "do not pass". The motion carried with Representatives Kemmis, Pavlovich, Holmes, Teague and Keedy voting "no".

HOUSE BILL NO. 836: Representative Keyser moved "do pass" The motion carried with the vote unanimous.

HOUSE BILL NO. 820: Representative Conroy moved "do pass" The motion carried with the vote unanimous.

HOUSE BILL NO. 746: Representative Eudaily moved "do pass". The motion carried with the vote unanimous.

HOUSE BILL NO. 801: Representative Keyser moved "do pas The motion carried with the vote unanimous.

FORTY - SEVEN LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY - SENATE

	House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
51	HB- 749	2/23/79	3/12/79	3/14/79					3/14/79	
52	HB- 774	2/23/79	3/13/79	3/21/79	majority + minority report				3/17/79	3/20/79
53	HB- 774	returned 3/21/79	3/19/79	3/22/79	to Secretary of Senate					3/21/79
54	HB- 775	2/23/79	3/13/79	—						the vote 3/13/79
55	HB- 783	2/23/79	3/13/79	3/13/79					3/13/79	
56	HB- 787	3/13/79	3/17/79	3/19/79					3/17/79	
57	HB- 788	3/13/79	3/17/79	3/19/79					3/17/79	
58	HB- 797	2/23/79	3/13/79	3/14/79					3/13/79	
59	HB- 803	2/23/79	3/14/79	3/21/79					3/20/79	
90	HB- 805	2/23/79	3/14/79	3/14/79				3/14/79		
91	HB- 813	2/22/79	3/14/79	3/20/79					3/19/79	
92	HB- 820	2/23/79	3/14/79	3/14/79				3/14/79		
93	HB- 833	2/23/79	3/6/79	3/6/79	Transferred out				3/17/79	
94	HB- 833	3/7/79	3/17/79	3/17/79					3/17/79	
95	HB- 836	2/23/79	3/9/79	3/17/79					3/17/79	
96	HB- 840	2/23/79	3/15/79	3/15/79				3/15/79		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 14, 1979

The fifty-ninth meeting of the Senate Judiciary Committee was called to order in room 331 of the capitol building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 805:

This is an act to repeal section 39-4-108, MCA, which was declared unconstitutional in Union Pacific Railroad Company v. Woodahl, 308 F. Supp. 1002, etc. Representative Williams introduced Jim Lear from the Legislative Council.

Mr. Lear stated that there was a court case and this was declared unconstitutional that stated the maximum hours a railroad employee could work.

There were no further proponents and no opponents.

There were no questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 803:

This is an act to define confidential health information: providing for disclosure of the information in certain cases, etc. Representative Anderson gave an explanation of this bill.

Jerry Loendorf, appearing on behalf of the Montana Medical Association, offered some amendments Norman Grosfield had submitted.

Chad Smith, representing the Montana Hospital Association, stated that actually most of what is in this bill is already in the law some place and he said the problem is there is no nice codification of all thse laws. He testified that this puts it in one package where people working in the health care facilities can find it. He said that it does expand somewhat in regard to the utilization of review and he said he was concerned about the

punitive part added at the end of the bill and he stated that in the drafting of this bill, it turned into criminal law; and once this is taken out, they find that the bill is acceptable and fill it will help.

Norm Grosfield, representing the Division of Workmens Compensation, stated that they asked for an amendment to clarify this matter.

There were no further proponents and no opponents.

Jo Driscoll, Chief of the Insurance Division, stated that confidentiality of health care information is very highly technical and highly complex. She stated that there was a model bill developed by the American Medical Association and being there was such extensive research put into this model bill, she felt that it would be good to follow. She stated that the model bill did not require consent for the state insurance department's investigation and she felt this should be amended for this purpose. She also suggested some further amendments and said that they would be much more comfortable with the model bill.

Norma Seiffert, who works in the Insurance Department, stated that she handles the policy holder's complaints, and she said that as far as third parties are concerned, they find that they get a lot of inaccuracies and she further said that a lot of claims are paid on the basis of information provided by health care providers.

Les Loble, representing the American Council of Life Insurers, stated they oppose the bill. He said that the A.M.A. bill would be a satisfactory bill from their point of view and he felt that this bill appears to be a garbled version of that bill. He testified that the National Association of Life Insurers are working on a model bill and we are probably going to support that. He also addressed some problems he felt were in the b'll.

Glen Drake, representing the American Insurance Companies of America, stated that there was also one other problem. He said the casualty insurers have what is called an index bureau and when a claim is submitted they send to the index bureau some very basic information and the nature of the injury that a claim is being filed for. He said that the purpose of this is to try to find the fraudulent claimant who is running a racket to bilk the insuarance

industry and the general public. He testified that as he reads this bill, this would be prohibited. He stated that Mr. Loble has covered the other problems that he has with the bill, he feels that it is most confusing and he would agree that it should have a do not pass as it is written.

There were no further opponents.

Senator Lensink asked Mr. Loendorf if he would like to respond to some of the comments made in regard to the A.M.A. model bill. Mr. Loendorf stated that he was given a draft about two years ago and he said that problems dealing with the confusion is hard to respond to. He said that in connection with information to be given by insurance companies, he thought section 4 at the top of page 4, is in response to that. He said that it seems to him that the insurance company does have the right to make a report if the party makes a request.

Senator Towe questioned on page 4, line 7, you use the word "affected person" and he wondered if they meant the person about whom the information is released. Mr. Loendorf replied that is the person against whom the action is taken.

Senator Towe questioned what was the reasoning behind the deletion of section 7. Mr. Loendorf stated that this was proposed to the committee and not by them and he said that they felt that this remedy was a little too harsh. Senator Towe said that in other words, with this section 7 gone, the only remedy is civil action and it is not specifically spelled out what kind of defense would be allowed.

Senator Towe questioned on page 3, lines 20 and 21, this is one of the exceptions, "by a health care provider" and he wondered what does that mean. Mr. Loendorf stated that in the operation of a physician's office, there are lay people there that may need the information.

Senator Towe questioned on page 6, legal process not subject to" and line 10, 'When compulsory process if otherwise authorized by law", does one not negate the other and what standard do they have. Mr. Loendorf stated that if authorized by law now, will continue to be authorized.

Senator Towe said that he guessed what it means is that you cannot do it by compulsory legal process unless you issue a subpoena.

Mr. Loendorf stated that this is essentially the same bill as last year and last year there were two objections to it and we satisfied those. Senator Towe questioned whose bill is this and it was noted that it was from the Montana Medical Association and the Montana Hospital Association.

Senator Turnage questioned what does this really intend to do. Mr. Loendorf said it was a general law prohibiting the disclosure of health care information except in those cases where it should be disclosed. He stated that the people we are trying to get at are auditors, researchers, etc., not to have to specifically identify the individual.

Senator Turnage questioned what is it really going to correct. Dr. McMahan, representing the Montana Medical Association, stated that the insurance companies are now giving out information about patients without the patients even knowing about it. He stated that the patient-doctor relationship is absolutely based on total trust and gradually, through growing insurance mechanisms, very particular information about patients is being released. He said some doctors do not tell their patients everything and most feel that this is appropriate. He said that hospital record rooms are being plagued by requests for passing out information. He further stated that health care is sacred, it should be pinpointed down in one place, the reason is to protect the patient and he said that arguments he has heard against this are the very reasons why it should be taken care of.

Senator Turnage questioned if the insurance companies are the big offenders, how are you going to stop them. They won't be able to pay claims if they can't get the information. There was some discussion on the tumor register.

Senator Turnage questioned on page 6, confidential health care information is not subject to legal process except under subsection (2). He asked if this is the only area whereby you can subpoena information.

Senator Turnage stated that it seems like to go around to where you want to be. Senator that was his point - the wording is bad but the is good. Senator Turnage stated that he was st convinced of that.

Mr. Smith said that one major reason for t page 3, one of the exceptions for consent on li 14 and he said that the hospitals have taken a sition not to release given information to anyo purpose unless it be by patient consent or by o the court. He stated in hospital evaluations, tion reviews, etc., if they are properly contro are in the public's best interest.

Senator Towe questioned that they do not a release even if there is no personal identifica volved. Mr. Smith said there is no way to rele without personal identification - he said that case-by-case study and not an accumulation - su as John Doe was kept in the hospital too long,(

Senator Turnage questioned "qualified pers who is in training or it is appropriate to his an insurance adjuster - anybody else. He said are talking about scientific research that is o but what about an insurance adjuster.

Senator Towe questioned why not the way th privacy laws are written. Mr. Smith said that want it to be mandatory, but he stated that if it as an exception to the consent and defined i down to the person making this evaluation, we w object. Senator Turnage said if you can't pers dentify, what good is it going to do the insura Dr. McMahan answered that the hospital has good both the hospital and the medical staff. He st it does in fact, help correct bad medical pract

There were no further questions or comment hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 813:

This is an act to revise and clarify the r the Department of Social and Rehabilitation Ser

Section 6. Amend 41-3-405 — Investigation of parents' or guardian's financial abilit

Section 7. Amend 41-3-406 — ~~Judgment~~ Dispositional hearing.

Section 8. NEW — Order for financial support.

Section 9. Amend 41-5-522 — Dispositional hearing.

Dispositional hearing in an action under the Youth Court Act can involve a determination of financial liability.

Section 10. Amend 41-5-803. — Support of youth committed to a custodial agency.

Section 11. NEW — Financial investigation by county welfare department.

An investigation is to be made if a youth is placed in a home where the department of social and rehabilitation services is responsible for the costs or if the youth is determined to be delinquent or in need of supervision after an adjudicatory hearing.

Section 12. NEW — Order for financial support.

The court is to hold a hearing to determine the ability of the youth's parents to pay support for a youth placed under the Youth Court Act.

NOTE - SB 301 (Lensink) deals somewhat with the same subject area. Note that the amendments on page 2 of HB 813 to 41-3-105 were proposed by the department of social and rehabilitation services in SB 301 - these amendments were rejected by the Senate Judiciary Committee in respect to SB 301. Note also that 41-3-202 is amended in both bills. The two bills conflict, in part, with respect to 41-3-202.

2) HB 803 (Anderson)

proposed bill -defines confidential health care information and provides for disclosure of the information in certain areas.

Section 1. NEW — Purpose.

Section 2. NEW — Definitions.

Section 3. NEW — Confidential health care information.

Cannot be released without the person's consent except in certain cases provided for in the bill.

Section 4. NEW — Condition of transfer -- right to request modification.

A person can request that a third party who has taken adverse action based on the confidential information transfer the information. The person can seek to have incorrect information modified.

Section 5. NEW — Privileged information -- exemption from compulsory legal process

Section 6. NEW — No limitation on licensing board.

Section 7. NEW

The House deleted the penalty section and provided that there can be no disciplinary or punitive action.

Section 8. NEW — Reporting obligations not limited.

REPORT OF THE BOARD OF TRUSTEES

Report: (A-76)

Subject: Confidentiality of Health Care Information: Model State Legislation

Presented by: Raymond T. Holden, M. D., Chairman

Referred to: Reference Committee B (J. E. Miller, M. D., Chairman)

In response to a request from the House of Delegates (C-73) the Council on Legislation has developed model state legislation on confidentiality. A copy of the model bill, as approved by the Board of Trustees on May 13, 1976 on recommendation of the Council, is submitted with this report.

Prior drafts of the model bill were before the House of Delegates at the 1975 Annual and Clinical Conventions. The present draft was prepared in response to concerns expressed at the 1975 Clinical Convention and to other recommendations received subsequently.

The new draft allows greater flexibility than did the prior draft to physicians' and hospitals' use of confidential health care information, while retaining the prior bill's restrictions on third parties' use of such information. Other portions of the prior bill, such as those relating to peer review immunity and nondiscoverability of peer review proceedings and records, have been retained in the new draft. Application of portions of the bill was extended to health care providers other than physicians.

Throughout the development of this model legislation a considerable effort was made to seek and respond to the suggestions of state and specialty medical societies and other interested organizations and individuals. Following the Council's approval of the new draft in January 1976, copies were sent to all state and specialty medical societies and approximately 35 organizations and individuals who had commented on the model legislation during its development. Comments were solicited on this latest draft.

Comments received during the process of developing this model bill have been most helpful. It was not, of course, possible to incorporate all of the changes suggested and still effectively respond to the issues which must be addressed in this proposal. However, the comments indicate that concerns with earlier drafts have been largely resolved.

Past House Action: C-75:90-98

IN THE GENERAL ASSEMBLY

STATE OF _____

A Bill

To Provide For Confidentiality
Of Health Care Information

Be it enacted by the People of the State of _____, represented in the General Assembly:

Section 1. This Act may be cited as the "Confidentiality Of Health Care Information Act".

Section 2. The purpose of this Act is to establish safeguards for maintaining the integrity of confidential health care information.

Section 3. For purposes of this Act --

(a) the term "health care provider" means any person, corporation, facility or institution licensed by this state to provide or otherwise lawfully providing health care services, including but not limited to a physician, hospital or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist or psychologist, and an officer, employee or agent of such provider acting in the course and scope of his employment or agency related to or supportive of health care services;

(b) the term "health care services" means acts of diagnosis, treatment, medical evaluation or advice or such other acts as may be permissible under the health care licensing statutes of this state;

(c) the term "confidential health care information" means information relating to a person's health care history, diagnosis, condition, treatment, or evaluation;

(d) the term "medical peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital, nursing home or other health care facility provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital, nursing home, or other health care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health care services;

(e) the term "third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

fidential health care information; (3) provide a written statement to each employee or agent as to the necessity of maintaining the security of confidential health care information, and of the penalties provided for in this Act for the unauthorized release, use, or disclosures of such information; receipt of such statement shall be acknowledged by such employee or agent signing and returning same to his employer or principal and the employer or principal shall furnish his employee or agent with a copy of the signed statement, and shall retain the original thereof; (4) take no disciplinary or punitive action against any employee or agent who brings evidence of violation of this Act to the attention of any person or entity.

(d) Consent forms for the release or transfer of confidential health care information shall contain, or in the course of an application or claim for insurance be accompanied by a notice containing, at least the following:

(1) the need for and proposed use of such information;

(2) a statement that all information is to be released or indicating the extent of the information to be released, and

(3) a statement that such information will not be given, sold, transferred, or in any way relayed to any other person or entity not specified in the consent form or notice without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of such information or the need for its transfer to another person or entity, and,

(4) a statement that such consent applies only to the release or transfer of confidential health care information existing prior to the date such consent is signed, except that when such consent is given in the course of an application or claim for insurance it shall also apply to medical information existing at any time during the period of contestability provided for in the policy and during periods of ongoing proofs of loss during a claim.

Section 5. (a) Upon occurrence of an action or decision of any third party, which adversely affects a person, and which is based in whole or in part upon his confidential health care information, including, but not limited to, the following actions or decisions: (1) denial of an application for an insurance policy; (2) issuance of an insurance policy with other than standard and uniform restrictions; (3) rejection in whole or in part of any claim for insurance benefits; (4) denial of an employment application or termination of employment when such denial or termination is for health reasons; and upon the written request of such person or his authorized representative (or, if such person is deceased, then his heir or beneficiary or their authorized representative or his estate), a third party shall transfer

dition into issue and the exemption and privilege shall apply in such situations as to those portions of one's confidential health care information relating to mental condition.

(B) the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(C) the physical or mental condition of a deceased individual is introduced by any party claiming or defending through or as a beneficiary of such individual;

(D) in a civil or criminal commitment proceeding, a physician, in the course of diagnosis, treatment, or medical evaluation of an individual, determines that an individual is in need of care and treatment in a hospital or any other health care facility which is deemed by the individual's physician to be appropriate for mental illness;

(E) a judge finds that an individual, after having been informed that the communications would not be privileged, has made communications to a psychiatrist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the individual's mental condition;

(F) in any court proceeding, including an ex parte hearing, it is demonstrated on a prima facie basis to the court that the individual's physical or mental condition is of an imminent and serious danger to the physical or mental health of another person, or to the security of the United States, or

(G) in any action by an individual pursuant to Section 9 of this Act, or in any policy action brought by an individual against his insurance carrier, or by the carrier against an insured, or in any other action by an individual wherein it is demonstrated to the court that such confidential health care information is relevant and material then such court may issue an order compelling production of such information.

(b) The exceptions contained in items (A) through (G) of subparagraph (2) above are not intended to preclude the exemption or privilege described in subparagraph (1) above in any pre-trial or trial proceedings under the Divorce Act of this State unless the individual or witness on his behalf first testifies as to such confidential health care information.

Section 7. (a) Notwithstanding other provisions of this Act, health care providers may make confidential health care information available to medical peer review committees without authorization.

Section 8. (a) Civil Penalties - Anyone who violates provisions of this Act, may be held liable for special and general damages.

(b) Criminal Penalties - Anyone who intentionally and knowingly violates provisions of this Act shall, upon conviction, be fined not more than $1,000, or imprisoned for not more than six months, or both.

(c) The civil and criminal penalties above shall also be applicable to anyone who obtains an individual's confidential health care information through the commission of a crime.

Section 9. A person or his authorized representative shall have the right, when there is an unreasonable refusal to change the records as provided in Section 5, to seek through court action the amendment or expungement of any part of his confidential health care information in a third party's possession which he believes is erroneous.

Section 10. Attorney's fees and reasonable costs may be awarded, at the discretion of the court, to the successful party in any action under this Act.

Section 11. Any agreement purporting to waive the provisions of this Act is hereby declared to be against public policy and void.

Section 12. If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.

Section 13. This Act shall become effective _____ (one year) from the date of being signed into law.

SENATE JUDICIARY COMMITTEE

PROPOSED AMENDMENT FOR HOUSE BILL NO. 803

Page 4,
Following: line 1
Insert: "(d) to a State Insurance Department for the purpose of reviewing an insurance claim or complaint made to such Department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured."

Section 4. (a) Except as provided in subsection (b) or as otherwise specifically provided by law, a person's confidential health care information shall not be released or transferred without the written consent, on a consent form meeting the requirements of section 4 (d) of this Act, of such individual or his authorized representative. A copy of any notice used pursuant to section 4 (d), and of any signed consent shall be provided to the person signing a consent form.

(b) No consent for release or transfer of confidential health care information is required in the following situations: (1) to a physician, dentist, or other medical personnel for diagnosis or treatment of such individual in a medical or dental emergency, or (2) to medical peer review committees, or (3) to a State Insurance Department or other state agency for the purpose of reviewing an insurance claim or complaint made to such Department or other agency by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured, or (4) to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies, but such personnel shall not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner (the term "qualified personnel" means persons whose training and experience are appropriate to the nature and level of the work in which they are engaged and who, when working as part of an organization, are performing such work with published and adequate administrative safeguards against unauthorized disclosures), (5) by a health care provider, as reasonably necessary in the provision of health care services to a person, or in the administration of the office or practice or operation of a health care provider (as used herein, "administration" shall include, but not be limited to, purposes of: accreditation, reimbursement, liability risk management or appraisal, and defense or prosecution of legal actions), (6) by an employer as reasonably necessary in the administration of a group insurance or workmen's compensation plan, (7) upon the filing of a claim for insurance benefits, between third party insurers to determine their relative rights and obligations concerning the individual's entitlement or the amount or kind of insurance benefits, when the policy of insurance obtained by the individual provides for obligations by more than one insurer with respect to a claim for benefits, or (8) between insurers and reinsurers in connection with the underwriting and administration of coverages and the processing of claims.

The release or transfer of confidential medical information under any of the above exceptions shall not be the basis for any legal liability, civil or criminal, nor considered a violation of this Act.

(c) Third parties receiving and retaining an individual's confidential health care information must establish at least the following security procedures: (1) limit authorized access to personally identifiable confidential health care information to persons having a "need to know" such information; additional employees or agents may have access to such information which does not contain information from which an individual can be identified; (2) identify an individual or individuals who have responsibility for maintaining security procedures for con-

NAME Les Loble II Bill No. HB803

ADDRESS 716 Power DATE 3-14-78

WHOM DO YOU REPRESENT Am. Council of Life Insurers

SUPPORT _____ OPPOSE X AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

AMH Version given by Mr. Boswell of Insurance Commissioner's office is acceptable.

Add at p4, line 2, add new sub section (g):
"(g) between insurers and reinsurers in connection with the underwriting and administration of coverages and the processing of claims."

At p6, l 23
Strike: ~~time~~ "pursuant to"
Insert: in an action by an individual pursuant to [this act] or in any policy action brought by an individual against his insurance carrier, or by a carrier against an insured, or in any other action by an individual wherein it is demonstrated to the court that such confidential information is relevant and material to such cause may issue an order compelling production of such information."

Change p5, l2-12 to conform to §5(c) of AMA Bill.

H-59

HOUSE BILL 803

Recommend that House Bill 803 be amended as follows:

1. Page 3, line 22.

~~Following~~:	"by"
Insert:	"to"

2. Page 3, line 23.

Following:	"or"
Strike:	"workers' compensation plan"
Insert:	"to a workers' compensation insurer, the Division of Workers' Compensation, or the Workers' Compensation Judge, as is necessary in the administration of Title 39, Chapters 71 and 72."

EXHIBIT 57

2. Page 5, line 2, - reference to erroneous information. We believe it would be improper for the "third party" to modify information provided by the health care provider. In handling complaints we must often verify information directly with the health care provider, and would require confirmation of such information in the event it involved a denial of a claim based on such information.

3.. Section 5, pages 5 and 6. We note a number of omissions from the model bill, - more particularly (G) of the model bill - copy attached. We merely wish to call this to the attention of the attorneys on the committee for their review and evaluation as to whether or not they are relevant to the intent of the bill.

As previously stated, we feel much more confortable with a model bill product, as it becomes extremely difficult to evaluate portions taken out of context.

Thank you for your consideration to these items.

MONTANA INSURANCE DEPARTMENT

Josephine Driscoll, Chief Deputy

SENATE JUDICIARY COMMITTEE

PROPOSED AMENDMENT FOR HOUSE BILL NO. 803

Page 4,
Following: line 1
Insert: "(d) to a State Insurance Department for the purpose of reviewing an insurance claim or complaint made to such Department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 20, 1979

The sixty-fourth meeting of the Senate Judiciary Committee was called to order by Everett R. Lensink, chairman of the committee on the above date in Room 331 of the Capitol Building at 9:40 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF HOUSE BILL 803:

Senator Turnage wondered why this bill is needed. Senator Brown explained that the insurance companies are passing information back and forth after they get it. Senator Towe commented that if a person is turned down by one insurance company they may be turned down by another.

Senator Anderson explained about the M.I.B., the Medical Information Bureau. He stated that they get this information now including name, birthday, and all medical history and explained that if they did away with the M.I.B., which acts as a memory bank, everybody's premium would have to go up because the insurance companies would have to insure people that misrepresent things on their application; and they feel that if they do away with confidentiality they will have to pass along the extra cost. He explained how he handled a rejection of an insurance application, stating that he goes back to the applicant and says he is sorry, they will not accept you, and if, in the case of cancer, he tells them that it is on behalf of the medical and to go talk to their doctor.

Senator Turnage moved that this bill be not concurred in. He stated that they are operating now and there is no horrible problem. Senator Towe commented that when they sign that application, they sign a consent for that information to be put in. Senator Turnage said that he would withdraw his motion if someone wants to move the bill.

Senator Lensink noted that with the use of computers, this allows much erroneous information to go into all areas and he further stated that this bill was not a doctor's bill, but was a patient's bill.

Senator Towe moved to amend the bill on page 6, line 23, by striking (e) and inserting "when otherwise ordered by a court". The motion carried unanimously.

Senator Brown moved that the bill be amended on page 3, lines 17 and 22 by striking "by" and inserting "to". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 6, lines 10 and 11 by striking all the new material in its entirety and renumbering accordingly. The motion carried with Senators Brown and Anderson voting no.

Senator Anderson suggested that unless there is a real need that the committee should wait for the A.M.A. model bill.

Senator Turnage stated that the way the bill stands now, it is contrary to Rule 35-A and 35-B.

Senator Towe moved that on page 6, line 23, the bill be amended by inserting immediately after the word "when", the following material: "authorized under Rule 35 of the Montana Rules of Civil Procedure, or". The motion carried unanimously.

Senator Towe moved the amendments presented by Norm Grosfield, Administrator of the Workers' Compensation Division of the Department of Labor and Industry, which read on page 3, line 23, following: "or" strike "workers' compensation plan" and insert "to a workers' compensation insurer, the Division of Workers' Compensation, or the Workers' Compensation Judge, as is necessary in the administration of Title 39, Chapters 71 and 72. The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The vote carried with Senators Olson, Anderson and Galt voting no.

RECONSIDERATION OF HOUSE BILL 774:

Senator Turnage moved that we reconsider our action on House Bill 774. The motion carried unanimously.

Senator Turnage stated that his recollection of the status of the bill was that with the exception of Joan's amendments, the committee adopted the amendment on page 3, line 16, which placed a "." after cohabitation and struck the remainder of the language in subsection 13.

Senator Towe said that his recollection was contrary to that. He thought he had just put a "." after the word, "separated" and not after "cohabitation". The secretary noted what was recorded in the minutes.

Senator Turnage moved to strike all the amendments that were previously adopted in connection with this bill. The motion carried unanimously.

Senator Turnage moved that the bill be amended on page 3, line 16, following the word, "cohabitation" by inserting a "." and further amend by striking all the remaining portion of line 16, all of line 17, 18, 19, and 20.

HOUSE BILL 803

Recommend that House Bill 803 be amended as follows:

1. Page 3, line 22.

   Following: "by"
   Insert: "to"

2. Page 3, line 23.

   Following: "or"
   Strike: "workers' compensation plan"
   Insert: "to a workers' compensation insurer, the Division of Workers' Compensation, or the Workers' Compensation Judge, as is necessary in the administration of Title 39, Chapters 71 and 72."

HB 803

1. Page 3, line 17.
Following: "(d)"
Strike: "by"
Insert: "to"

2. Page 3, line 22.
Following: "(e)"
Strike: "by"
Insert: "to"

3. Page 3, lines 23, [illegible]
Following: "or" [illegible]
[illegible]
Insert: "to a"

4. Page 3, line 24.
Following: "compensation"
Strike: "plan"
Insert: "insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72"

5. Page 6, lines 10 and 11.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

EX 6/7

HB 803 (continued)

6. Page 6, line 23.
Following: "(e)"
Strike: "in an action pursuant to [
Insert: "rules required by Rule
attorneys ordered by Court"

STANDING COMMITTEE REPORT

March 21 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 803

Anderson (Towe)

Respectfully report as follows: That House Bill No. 803,

third reading bill, be amended as follows:

1. Page 3, line 17.
Following: "(d)"
Strike: "by"
Insert: "to"

2. Page 3, line 22.
Following: "(e)"
Strike: "by"
Insert: "to"

3. Page 3, line 23.
Following: "or"
Insert: "to a"

~~AMENDED~~ (Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

March 21 19 79

4. Page 3, line 24.
Following: "compensation"
Strike: "plan"
Insert: "insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72"

5. Page 6, lines 10 and 11.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

6. Page 6, line 23.
Following: "(e)"
Strike: "to an action pursuant to [section 7]"
Insert: "when required by Rule 35, M.R.Civ.P., or otherwise ordered by a court"

And, as so amended,
BE CONCURRED IN

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 803

INTRODUCED BY ANDERSON, GESEK, PAVLOVICH, FEDA, HAYNE, ROTH, JENSEN, NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE CONFIDENTIAL HEALTH CARE INFORMATION; PROVIDING FOR DISCLOSURE OF THE INFORMATION IN CERTAIN CASES~~, AND PROVIDING PENALTIES FOR VIOLATION~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of [this act] is to establish safeguards for maintaining the integrity of confidential health care information.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means diagnosis, treatment, medical evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information OBTAINED BY A HEALTH CARE PROVIDER relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

Section 3. Confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the

REFERENCE BILL

written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) by IO a health care provider:

(i) as may be reasonably necessary to provide health care services IO THE INDIVIDUAL ABOUT WHOM THE INFORMATION RELATES; or

(ii) in the administration of the office, practice, or operation IN CONNECTION WITH THE PROVIDING OF HEALTH CARE SERVICES IO THE INDIVIDUAL ABOUT WHOM THE INFORMATION RELATES;

(e) by IO an employer as may be reasonably necessary

in the administration of a group insurance plan or IO A workers' compensation plan INSURER, THE DIVISION OF WORKERS' COMPENSATION, OR THE WORKERS' COMPENSATION JUDGE, AS IS NECESSARY IN THE ADMINISTRATION OF TITLE 39, CHAPTERS 71 AND 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit.;

(G) IO A STATE INSURANCE DEPARTMENT FOR THE PURPOSE OF REVIEWING AN INSURANCE CLAIM OR COMPLAINT MADE IO SUCH DEPARTMENT BY AN INSURED OR HIS AUTHORIZED REPRESENTATIVE OR BY A BENEFICIARY OR HIS AUTHORIZED REPRESENTATIVE OF A DECEASED INSURED.

Section 4. Conditions of transfer -- right to request modification. (1) A third party who has performed an adverse action defined in subsection (2) may transfer confidential health care information to a designated physician when the third party receives a written request signed by the affected person or his authorized representative.

(2) The adverse action referred to in subsection (1) may include but is not limited to:

(a) denial of an application for an insurance policy;

(b) issuance of an insurance policy with other than standard and uniform restrictions;

(c) rejection in whole or in part of any claim for insurance benefits;

(d) denial of an employment application or termination of employment when such denial or termination is for health reasons.

(3) Prior to making a transfer, a third party may require payment of actual expenses incurred in the retrieval, duplication, and forwarding of such information.

(4) A physician receiving confidential health care information pursuant to subsection (1) may review and interpret the information. Thereafter, the physician may, in his discretion, disclose to the affected person as much of the transferred information as he believes is in the best interest of the affected person to know.

(5) After reviewing confidential health care information received pursuant to subsection (4), an affected person or his authorized representative may request a third party to amend or expunge any part of the information that he believes is in error or request the addition of relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded the information to the third party. If the health care provider concurs with the modification requested by the affected person, the third party shall modify the information in accordance with the request.

(6) Modification of confidential health care information may be required by court order upon action

brought by the requestor.

(7) After reviewing confidential health care information received pursuant to subsection (4), a person has the right to place into the confidential file a personal statement of reasonable length regarding the correctness or relevance of existing information or regarding the addition of new information. The statement or a copy thereof shall at all times accompany that part of the information to which it relates.

Section 5. Privileged information -- exemption from compulsory legal process. (1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

(2) The exemption or privilege provided in subsection (1) does not apply:

~~(a)--when-compulsory-process-is-otherwise-authorized-by-law;~~

~~(b)~~(A) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

~~(c)~~(B) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

~~(d)~~(C) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

~~(e)~~(D) to an action pursuant to ~~[section 7]~~ WHEN REQUIRED BY RULE 35, M.R.CIV.P., OR OTHERWISE ORDERED BY A COURT.

Section 6. No limitation on licensing board. [This act] does not limit the authority, otherwise provided by law, of a licensing or disciplinary board of this state to require a peer review committee to report to it concerning any disciplinary actions or recommendations of the committee or to transfer to it records of the committee's proceedings or actions, including confidential information. [This act] does not limit the authority of such board to restrict or revoke a license to practice. However, personally identifiable portions of a person's confidential health care information may not be used in any legal action without the written consent of the person or his authorized representative, except upon court order.

~~Section 7. Remedies -- civil and criminal~~

~~exceptions. (1) A person who knowingly violates [this act] is guilty of a misdemeanor.~~

~~(2) A person who violates [this act] may be held liable for compensatory damages caused by the violation. Punitive damages may also be awarded.~~

~~(3) A person who obtains confidential health care information by criminal means is subject to the liabilities and penalties provided in subsections (1) and (2) in addition to any other penalty imposed by law for such criminal actions.~~

~~(4) The release or transfer of confidential medical information pursuant to [subsection (2) of section 3] may not be the basis for a civil or criminal liability and is not a violation of [this act].~~

~~(5) No disciplinary or punitive action may be taken against an employee or agent who brings evidence of violation of [this act] to the attention of a person or entity.~~

~~Section 8. Attorney's fees and costs. Attorney's fees and reasonable costs may be awarded at the discretion of a court to a successful party in any action brought under the provisions of [this act].~~

~~Section 9. No waiver of acts. An agreement purporting to waive the provisions of [this act] is invalid.~~

~~Section 10. Exemptions. (1) [This act] does not apply~~

~~to-the-press.~~

~~(2)--[This-act]-may--not--be--construed--to--limit--the reporting--obligations-provided-by-Title-37,-chapter-3,-part 4,-or-any-other-statute-which--requires--information--to--be reported-to-a-government-agency.~~

SECTION 7. THERE IS A NEW MCA SECTION THAT READS:

No disciplinary or punitive action. No disciplinary or punitive action may be taken against an employee or agent who brings evidence of violation of [this act] to the attention of a person or entity.

SECTION 8. THERE IS A NEW MCA SECTION THAT READS:

Reporting obligations not limited. [This act] may not be construed to limit the reporting obligations provided by Title 37, chapter 3, part 4, or any other statute which requires information to be reported to a government agency.

-End-